

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCIS BURGA, et al.,

Defendants.

Case No. 18-cv-01633-BLF (SVK)

**ORDER APPOINTING SPECIAL
MASTER**

As set forth in this Court's August 16, 2019 order (Dkt. 37), the Court has determined that the appointment of a Special Master is appropriate to review the Parties' instant dispute regarding privileged documents. *See* Fed. R. Civ. P. 53(a)(1); Dkt. 37 at 13. Pursuant to Fed. R. Civ. P. 53(b)(1) and the Court's August 16, 2019 order, all Parties have notice of the Court's intent to appoint a Special Master and have had an opportunity to be heard with respect to such appointment. Accordingly, the Court **ORDERS** as follows:

1. The Court appoints Edward W. Swanson (hereinafter "Special Master") to serve as Special Master for the purpose of reviewing the remaining documents over which Respondents Francis Burga, individually and as the administrator of the estate of her late husband, Margelus Burga, and Russell Mansky (collectively, "Respondents") assert privilege. The Court has considered the declaration submitted by Mr. Swanson (Dkt. 43) and finds that he does not have a relationship with the parties, attorneys, action, or this Court that would require disqualification under 28 U.S.C. § 455.

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1 **I. DUTIES OF THE SPECIAL MASTER**

2 2. Except as specifically set forth below, the Special Master will possess the full authority
3 permitted under Fed. R. Civ. P. 53(c) to perform the duties set forth in this order.

4 3. The Special Master shall review and resolve all privilege claims made by Respondents
5 and any exceptions asserted by the Government with respect to such claims.

6 4. The Special Master shall proceed with all reasonable diligence in accordance with the
7 protocol described in this order and Fed. R. Civ. P. 53(b)(2). The Special Master shall have
8 discretion to set additional procedures as he sees fit.

9 **II. PROTOCOL**

10 5. The documents to be reviewed are those that Respondents claim to be privileged in
11 accordance with the rulings and guidelines set forth by this Court in its August 16, 2019 Order
12 (Dkt. 37).

13 6. Upon the Special Master's appointment and pursuant to stipulation, the Parties shall
14 provide the Special Master with copies of the pleadings each party filed regarding the
15 Government's challenge to Respondents' assertion of privilege. The Parties shall also provide the
16 Special Master with this Court's August 16, 2019 Order (Dkt. 37).

17 7. Respondents bear the burden of establishing their privilege claims. Respondents shall
18 provide the Special Master with: (1) a log identifying the documents they believe to be privileged
19 and the basis for their belief in sufficient detail to permit the Special Master and the Government
20 to assess the privilege claim; and (2) copies of the identified documents for *in-camera* review by
21 the Special Master. Respondents shall provide the log and the documents in the form(s) specified
22 by the Special Master (e.g., paper or electronic media). Pursuant to stipulation, both the log and
23 the documents must be provided to the Special Master by **December 20, 2019**.

24 8. If the Government disputes any of Respondents' privilege claims or believes that an
25 exception applies, the Special Master shall resolve the dispute. The Special Master shall set
26 deadlines for the Government to object to Respondents' privilege claims and to assert that an
27 exception applies.

28 9. The Special Master shall advise the Government of any documents that the

1 Respondents agree are not privileged or that Respondents agree fall within an exception to the
2 applicable privilege.

3 10. In resolving disputes about privilege claims or exceptions, the Special Master will
4 communicate with counsel in writing pursuant to stipulation. Counsel will have seven days to
5 respond in writing. The Parties will also make themselves available for joint telephone calls with
6 the Special Master if requested.

7 11. The Special Master may hear oral argument and conduct other proceedings that he
8 deems necessary to resolve the dispute. The Special Master may adopt any reasonable procedural
9 requirements, with notice to the Parties thereof.

10 **III. REPORTS AND RECOMMENDATIONS**

11 12. Pursuant to stipulation, the Special Master shall provide a written report containing his
12 recommended resolution of the Parties' dispute and any objections or exceptions by **January 31,**
13 **2020.**

14 13. The Special Master shall file other reports as the Court may direct.

15 14. Pursuant to Fed. R. Civ. P. 53(e), the Special Master shall file any orders, reports,
16 or recommendations with the Court under seal by e-filing the document as such, as required by
17 Civil Local Rule 79-5(a). In addition, the Special Master shall email copies of his orders, reports,
18 or recommendations to counsel and the Court.

19 15. Pursuant to Fed. R. Civ. P. 53(b)(2)(D) and 53(f), the following procedures shall
20 govern any action on the Special Master's orders, reports, or recommendations: Any party wishing
21 to file objections to or a motion to adopt or modify the Special Master's order, report, or
22 recommendation must file such objection or motion with the Court by **February 14, 2020.** The
23 party filing the objection or motion shall submit with such objection or motion any record
24 necessary for the Court to review the Special Master's order, report, or recommendation, including
25 any transcripts of proceedings before the Special Master and any documents submitted by the
26 Parties in connection with the Special Master's order, report, and recommendation.

27 16. Pursuant to the Parties' stipulation, the Special Master's findings will be reviewed for
28 clear error under Fed. R. Civ. P. 53(f)(3)(A). Pursuant to Fed. R. Civ. P. 53(f)(1), in acting on an

1 order, report, or recommendations of the Special Master, the Court shall afford each party an
2 opportunity to be heard and, at its discretion, may receive evidence and may adopt or affirm,
3 modify, wholly or partly reject or reverse, resubmit to the Special Master with instructions, or
4 make any further orders it deems appropriate. The Parties will be heard on **February 27, 2019 at**
5 **10:00 a.m.**

6 **IV. OTHER MATTERS**

7 17. Pursuant to Fed. R. Civ. P. 53(b)(2)(B), the Special Master may communicate ex
8 parte with the Court at any time. The Special Master shall not communicate ex parte with any
9 party, third-party witness, or counsel for any party or third party.

10 18. Pursuant to Fed. R. Civ. P. 53(b)(2)(C), the Special Master shall maintain orderly
11 files consisting of all documents submitted to him by the Parties and his written orders, reports,
12 and recommendations.

13 19. Pursuant to Fed. R. Civ. P. 53(b)(2)(E) and 53(g), the Special Master shall be
14 compensated at an hourly rate of \$750.00 for his services pursuant to this order. The Special
15 Master shall prepare an invoice for his services which he shall provide to counsel for the Parties.
16 The Special Master's fees shall be split equally among the Government and Respondents and shall
17 be paid promptly and in full. The Court will review this allocation no later than at the conclusion
18 of these proceedings and will adjust the allocation, as appropriate, after affording the Parties an
19 opportunity to be heard.

20 **SO ORDERED.**

21 Dated: December 18, 2019

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24 SUSAN VAN KEULEN
25 United States Magistrate Judge
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